

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT, herein the "Agreement," is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Redevelopment Agency of West Valley City, a body politic of the State of Utah, herein the "Buyer," and Whitmore, Inc., herein referred to as "Seller".

### **R E C I T A L S :**

- A. The Seller owns approximately 0.67 acres of improved real property in two adjoining parcels located at approximately 2867 West 3500 South and 2851 West 3500 South, in West Valley City, Salt Lake County, State of Utah, herein the "Property." The Property is more particularly described and depicted on the attached Exhibit "A," which is incorporated herein. For the purposes of this Agreement, the term "Property" shall include the Land and all of the Seller's right, title, and interest in and to all leases, privileges, rights-of-way, easements, appurtenances, and all other rights appurtenant to or connected with the beneficial use or enjoyment of the Land.
- B. The Seller is willing to sell the Property to the Buyer, and the Buyer desires to purchase the Property from the Seller, upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement, the Buyer and the Seller agree as follows:

### **A G R E E M E N T :**

- 1. **Purchase of Property.** Subject to the terms and conditions of this Agreement the Seller agrees to sell the Property to the Buyer, and the Buyer agrees to purchase the Property from the Seller. The Seller hereby agrees to effect this purchase and sale transaction through the use of a Special Warranty Deed, subject only to non-delinquent taxes and assessments and the title and survey matters not expressly disapproved of by the Buyer in the manner set forth in this Agreement.
- 2. **Purchase Price.**
  - a. Purchase Price. The Purchase Price of the Property shall be Seven Hundred Fifty Five Thousand Dollars (\$755,000.00), payable in United States currency.
  - b. Earnest Money. \$20,000 refundable earnest money to be paid to the Seller upon execution of this Agreement. The Earnest Money shall become non-refundable upon the expiration of the due diligence and inspection proceedings.

- c. Balance of Purchase Price. The Buyer shall pay the entire Purchase Price, less the Earnest Money, in cash at the Closing.
3. **Conditions to Closing.** The Closing shall not occur until each one of the following conditions precedent has been satisfied, at the Buyer's sole discretion, prior to the Closing; provided, however, that the Buyer is entitled to waive any of the conditions in writing.
- a. Title Insurance/Approval of Title. At the Closing, the title company shall be ready, willing, able, and irrevocably committed to issue a standard coverage owner's policy of title insurance in the amount of the Purchase Price and insuring the Buyer's fee simple ownership of the Property. The coverage of the title policy shall be subject only to nondelinquent taxes and assessments, standard exceptions contained in a standard owner's policy of title insurance, and such other title matters not expressly disapproved by the Buyer in the manner set forth in this Agreement. At the time of execution of this Agreement, the title has been reviewed by the Buyer and the Buyer has no objection to the exceptions listed in the report. However, the Buyer reserves the right to object to any additional matters that arise prior to Closing. In that case, the Seller shall correct the title defects or, if the defects are not corrected within sixty (60) days, the Buyer may terminate this Agreement. If the Agreement is terminated under this provision, then the earnest money shall be returned to the Buyer, the Buyer shall bear any fees charged by the title company, and the parties shall be relieved of any further obligation to each other under this Agreement, except as otherwise provided herein.
- b. Inspections. From the effective date of this Agreement until its termination or closing, the Buyer and/or its agents shall have the right to enter upon the Property and, at the Buyer's sole cost, to physically survey, inspect, and map the Property; to conduct engineering, geological, environmental assessments and other tests; to determine zoning, building, and occupancy requirements for the Property; and to detect any defects or other problems in the Property. Buyer, in the conduct of its inspections and investigations, shall not interfere with any existing operations on the Property and shall repair or restore the Property to its original condition. Buyer shall indemnify and hold the Seller harmless from and against any and all physical damage to the Property or personal injury to the Buyer and its agents, invitees and assigns resulting from the Buyer's entry onto and activities upon the Property. The Buyer shall have thirty (30) days from execution of this Agreement to conduct the inspections. The Buyer may, with the written permission of the Seller, extend the inspection time by thirty (30) days upon written notice to the Seller.

In order to facilitate the inspections the Seller has provided the following information to the Buyer:

- (i) a copy of the current lease with the existing tenant and any other leases, contracts, information or documentation relating to the property, including any condemnation proceedings or notice of condemnation proceedings;
  - (ii) no equipment and personal property contained in or related to the property will be included in the purchase of the Property;
  - (iii) there are no rental deposits held by the Seller which will be conveyed to the Buyer at Closing.
- c. No Adverse Developments or Change. Except for the portion of the Property being taken for 3500 South Right of Way by the Utah Department of Transportation, from the date of the execution of this Agreement to purchase the Property through the Closing, the Property and the condition of the title thereto shall not have been adversely affected as a result of legislative or regulatory change, casualty, riot, civil commotion, condemnation, requisition, embargo, order of abatement to clean up hazardous waste, act of God or war, or any other change that would, in the Buyer's reasonable discretion, adversely change or affect the Property or the condition of the title thereto, whether or not such adverse change is insured against. Should such an adverse change to the Property or to the condition of the title to the Property occur before the Closing, the Buyer may elect to permit the Seller, if the Seller is willing and able, to remedy the adverse change, or the Buyer or the Seller may elect to terminate this Agreement. If the Buyer elects to permit the Seller to remedy the adverse change, the Seller shall have Sixty (60) days to remedy such adverse change to the Buyer's satisfaction. If the Seller fails to timely and adequately remedy such adverse change or elects not to do so, this Agreement shall terminate. In that case, the earnest money shall be returned to the Buyer and the Buyer shall bear any fees charged by the title company, and the parties shall be relieved of any further obligation to each other under this Agreement, except as otherwise provided herein.
- d. Environmental Assessment. The Buyer, at its own expense, may obtain an environmental assessment of the Property, and such environmental assessment and the environmental condition of the Property shall be acceptable to the Buyer, in the Buyer's sole discretion. The indemnification, repair, and restoration requirement set forth above are applicable to the Buyer's environmental investigations. The time period within which the environmental assessment must be completed is the inspection period referenced above, and, if no environmental objection is made within said (as more fully described above), the environmental condition of the Property shall be deemed waived by the Buyer.

- e. Midas Right of First Refusal. The existing lease on the Property between Whitmore's, Inc., and Midas Realty Corporation ("Midas") contains a right of first refusal whereby Midas may choose to purchase the Property under the terms and conditions set forth in the lease. The purchase of the Property by the Buyer is contingent upon Midas' waiver or failure to exercise its right of first refusal to purchase the Property.
- 4. **Failure of Conditions.** If any condition precedent is not satisfied, and if such condition is not waived by the Buyer on or before the Closing Date, this Agreement shall terminate, and the Buyer shall not be obligated to purchase the Property. In such case, the earnest money shall be refunded, the Buyer shall bear any title company fees and neither party shall have further rights or obligations hereunder, except as otherwise set forth herein.
- 5. **Closing.** The term "Closing" is used in this Agreement to mean the time at which the title company records the Deed in the office of the Salt Lake County Recorder. Subject to the extension rights provided herein, the Closing shall occur on or before July 31, 2008, unless the Buyer and the Seller mutually agree in writing to close the transaction on a later date, or unless otherwise provided for in this Agreement.
  - a. Buyer Deliveries. On or before the Closing Date, the Buyer shall deliver payment of the balance of the cash Purchase Price and a duly executed settlement statement to the Seller.
  - b. Seller Deliveries. On or before the Closing Date, the Seller shall deliver the following:
    - (i) The duly executed and acknowledged Special Warranty Deed in favor of the Buyer or such entity as the Buyer may direct, conveying fee title to the Property, free and clear of all liens and encumbrances, except for the Permitted Exceptions.
    - (ii) Such authority documents as the Buyer and the title company shall reasonably request to evidence the authority of each of the persons executing the Special Warranty Deed, and other Closing documents in behalf of the Seller.
    - (iii) A duly executed settlement statement.
    - (iv) Original copies, as available, of all leases, subleases, contracts and easements relating to the Property. All such leases, subleases, contracts and easements shall be assigned to the Buyer at Closing.
  - c. Prorations. The following items shall be prorated as of the Closing Date:

- (i) Current rents received from the Property.

The Seller shall furnish to the Buyer sufficient information to enable the Buyer and the Seller to make the proration required under this Agreement.

- d. Buyer's Costs. The Buyer shall pay the following items at or before the Closing:

- (i) Any escrow fees and recording costs at the Closing.
- (ii) The cost of a standard ALTA title policy and any extended coverage to be added, at the discretion of the Buyer, to the standard ALTA title policy.

- e. Seller's Costs. The Seller shall pay no costs at or before the Closing:

- f. Failure to Deliver.

- (i) If the Buyer fails or refuses to deliver the required funds and documents at the Closing, the Seller may, at the Seller's option, extend the time for the Closing, or may, in writing, terminate this Agreement. Should the Seller elect to terminate this Agreement pursuant to this section, the Seller shall be entitled to retain the earnest money deposited by the Buyer as liquidated damages, refund the earnest money to the Buyer and commence an action for damages, or bring an action to compel specific performance by the Buyer. The Buyer shall be responsible for any escrow fees incurred. All other costs shall be borne by the party incurring the cost. The Seller expressly agrees that the liquidated damages collected by the Seller, action for damages, or action for specific performance pursuant to this section shall be the Seller's sole remedies for the Buyer's failure to perform or deliver at the Closing.
- (ii) If the Seller fails or refuses to deliver a valid and acceptable Deed or such other documents as may be necessary for the Seller to perform at the Closing, the Buyer may, at the Buyer's option, extend the time for the Closing, or may, in writing, terminate this Agreement. The Seller shall be responsible for all escrow and Closing costs, and the Buyer may take any legal action necessary to enforce the Buyer's rights, be made whole for damages caused by the Seller's default, and/or compel specific performance by the Seller.

**6. Seller's Representations and Warranties.**

- a. The parties expressly understand that each of the following representations and warranties and each of any others made herein is material, and that the Buyer is relying upon each of such representations and warranties as true and correct as of the date on which the parties executed this Agreement and as of the Closing Date, as though such representations and warranties had been made on each of such dates. The warranties set forth in this Section 6(a) shall survive the Closing of this transaction. As a condition to the Closing, the Seller hereby makes the following representations and warranties, in addition to any others made in this Agreement:
- (i) At the Closing, the Seller will be the sole owner of the Property and will hold title to the Property in fee simple, free and clear of all encumbrances, except for the Permitted Exceptions.
  - (ii) The Seller warrants that there is no pending claim, suit, or litigation that involves the Property.
  - (iii) The Seller has no knowledge of any condemnation proceedings having been instituted or threatened against all or any portion of the Property by any governmental entity other than the Buyer. Provide, however, that the Parties acknowledge that the Utah Department of Transportation (“UDOT”) has made an offer to purchase or condemn a portion of the Property and that this purchase by the Buyer shall be less the portion of the Property acquired by UDOT.
  - (iv) At the Closing, there will be no unpaid bills or claims in connection with the Property, except nondelinquent taxes and assessments.
  - (v) No portion of the Property shall be subject at the Closing to any management, listing, or service agreement or arrangement respecting the Property, so that the Buyer shall receive all of the Property free and clear of any such management agreement or other contracts and shall be free to manage and service the Property with representatives of its own choice.
  - (vi) This Agreement and the consummation of this transaction do not and will not contravene any provision of any judgment, order, decree, writ, or injunction, and will not result in a breach of, constitute a default under, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, or other instrument to which any of the persons or entities comprising the Seller is presently a party or by which any of the same or their respective assets are presently bound or affected.

- (vii) All documents delivered to the Buyer by the Seller pursuant to this Agreement are true, correct, and complete originals or accurate copies of originals.
  - (viii) To the best knowledge of the Seller, no hazardous waste or toxic substances have been stored on, released into, generated on, or deposited upon the Property or into any water systems on or below the surface of the Property, and the Property complies with all local, state, and federal hazardous waste laws, rules, and regulations.
- b. Except as otherwise specifically set forth in this Agreement, the Seller hereby specifically disclaims, and the Buyer hereby waives, any warranty, guaranty, or representation, oral or written, past, present, or future of, as to, or concerning: (i) the nature and condition of the Property, including, but not by way of limitation, the water, soil, and geology, and the suitability thereof and of the Property for any and all activities and uses that the Buyer may wish to conduct thereon; (ii) the manner, construction, condition, and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, except for any warranties contained in the Seller's deed; (iv) compliance of the Property or its operation with any laws, rules, ordinances, or regulations of any government or other body or with any covenants, conditions, or restrictions of record that may affect the Property. THE SALE OF THE PROPERTY AS PROVIDED FOR IN THIS AGREEMENT IS MADE ON AN "AS-IS, WHERE-IS" BASIS, AND THE BUYER EXPRESSLY ACKNOWLEDGES THAT IN CONSIDERATION OF THE AGREEMENTS OF THE SELLER HEREIN, EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, THE SELLER MAKES AND HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF OWNERSHIP, EXISTENCE, QUALITY, QUANTITY, VALUE, CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OF THE PROPERTY. The Buyer agrees that, except as may otherwise be specifically provided in this Agreement, the Seller is not liable or bound in any manner by express warranties, representations, or statements made by the Seller or anyone acting or purporting to act on behalf of the Seller, pertaining or relating to the Property or its state of title. The Buyer further agrees and acknowledges that it is not relying upon any statement, information, or representation with respect to any matters relating to the aforesaid, other than those obtained by the Buyer from sources other than (i) the Seller or (ii) anyone acting or purporting to act on behalf of the Seller.

**7. Risk of Loss.**

- a. Casualty. If, prior to the Closing Date, the Property or any portion thereof is damaged by fire, acts of God, or other casualty or cause, the Buyer shall have the right to terminate this Agreement.
  - b. Termination of Agreement. If the Buyer terminates this Agreement under this section, except as otherwise provided herein, the parties shall be released from all further obligations and liabilities under this Agreement, except for the obligation to pay the title company's cancellation fee, if any, which shall be paid by the Buyer. All other costs and expenses shall be borne by the party incurring the cost or expense and the earnest money shall be returned to the Buyer.
8. **Brokerage Commissions.** The Seller is not represented by a real estate agent or broker in this transaction and hereby indemnifies the Buyer from and against all claims, actions, damages, or costs, including reasonable attorney's fees and court costs, in connection with any claimed brokerage or real estate commissions with respect to the transaction contemplated by this Agreement that arise from or through any agent or broker consulted or used by the Seller. The Buyer is represented in this transaction by Dee Hansen of the DRH Company and the Buyer hereby indemnifies the Grantor from and against all claims, actions, damages, or costs, including reasonable attorney's fees and court costs, in connection with any claimed brokerage or real estate commissions with respect to the transaction contemplated by this Agreement that arise from or through the DRH Company or any agent or broker consulted or used by the Grantee.
9. **Additional Documents.** Both the Buyer and the Seller agree to execute all other documents and to do such other acts as may be reasonably necessary or proper in order to consummate the transaction contemplated by this Agreement.
10. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Seller:           Whitmore, Inc.  
870 East 9400 South, No. 206  
Sandy, UT 84094

With a copy to:           Jon C. Heaton, Esq.  
Prince, Yeates & Geldzahler  
175 East 400 South #900  
Salt Lake City, UT 84111



If to the Buyer:           Attn: Brent Garlick, Redevelopment Agency Director  
West Valley City  
3600 Constitution Blvd  
West Valley City, Utah 84119

With a copy to:           Attn: City Attorney  
West Valley City  
3600 Constitution Boulevard  
West Valley City, Utah 84119

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

11.    **Attorney's Fees.** Should it become necessary for either party to enforce its rights under this Agreement, whether in suit or otherwise, the prevailing party shall be entitled to recover from the unsuccessful party reasonable attorney's fees and costs, including in house counsel, in addition to any other relief to which the party attempting to enforce its rights hereunder may be entitled.
12.    **Modification.** Neither party to this Agreement may amend or modify this Agreement, except in a writing executed by the parties hereto.
13.    **Entire Agreement.** The parties expressly agree that this Agreement and the exhibits attached hereto constitute the full and complete understanding and agreement of the parties, and that this Agreement supersedes all prior understandings, agreements, and conversations between the parties, whether oral or written. Any prior negotiations, correspondence, or understandings related to the subject matter of this Agreement shall be deemed to be merged into this Agreement and the attached exhibits.
14.    **Severability.** If any term or provision of this Agreement is invalid or unenforceable for any reason whatever, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
15.    **Captions and Headings.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.
16.    **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original for all purposes, but all of which shall constitute but one and the same instrument.

17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.
18. **Assignability.** This Agreement shall bind and inure to the benefit of the assignees, heirs, and successors-in-interest of the Buyer and the Seller. Neither the Buyer nor the Seller shall assign its rights or delegate its obligations hereunder without the prior written consent of the other.
19. **Time of the Essence.** Time is of the essence with respect to the performance of the parties under this Agreement.
20. **Waiver.** A waiver by either party of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.
21. **No Recording.** Neither party shall record this document with the Office of the Salt Lake County Recorder without the written permission of the other party.
22. **Merger.** Except for the terms and conditions contained in paragraph 6, above, none of the terms of this Agreement shall survive the Closing, but shall be merged into the Special Warranty Deed and other documents of conveyance.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first above written.

BUYER:

\_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM  
WVC Attorney's Office

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
personally appeared before me \_\_\_\_\_  
[*name of person(s)*], whose identity is personally known to me or proved to me on the basis of  
satisfactory evidence, and who affirmed that he/she is the \_\_\_\_\_ [*title*],  
of Whitmore, Inc., a corporation, and said document was signed by him/her in behalf of said  
corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he/she  
acknowledged to me that said corporation executed the same.

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Notary Public

## **Exhibit "A"**

### **PARCEL 1:**

Beginning at a point 827 feet West and 33.0 feet South of the Northeast corner of the Northwest Quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence South 160 feet; thence West 82.0 feet; thence North 160 feet; thence East 82.0 feet to the point of beginning.

Said property is also known by the street address of:

2867 West 3500 South, West Valley City, Utah 84119 (PARCEL 1)

Less and excepting the following property taken by the Utah Department of Transportation for 3500 South Street right of way:

A parcel of land in fee, being part of an entire tract of property situate in the NE1/4NW1/4 of Section 33, T.1S., R.1W., S.L.B.&M. The boundaries of said parcel of land are described as follows:

Beginning at the northeast corner of said entire tract in the southerly right of way line of the existing highway State Route 171 which corner is 827.00 feet West and 33.00 feet South from the North Quarter Corner of said Section 33 said corner is also approximately 16.60 feet perpendicularly distant southerly from the control line of said project opposite engineer station 717+11.27; and running thence South 29.07 feet along the easterly boundary line of said entire tract to a line parallel with and 45.67 feet perpendicularly distant southerly from said control line; thence N.89°58'50"W. 82.00 feet along said parallel line to the westerly boundary line of said entire tract; thence North 29.04 feet along said westerly boundary line to the northwest corner of said entire tract; thence East 82.00 feet along said southerly right of way line to the point of beginning. The above described parcel of land contains 2,383 square feet or 0.055 acre in area, more or less.

(Note: Rotate all bearings in the above description 00°07'58" clockwise to obtain highway bearings.)

And, subject to the following Temporary Easement in favor of the Utah Department of Transportation:

A temporary easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 33, T.1S., R.1W., S.L.B.&M., in Salt Lake County, Utah, to facilitate the construction of roadway improvements, side treatments and appurtenant parts thereof and blending slopes.

**Non-exclusive use.** The easement acquired herein does not convey any right except as stated herein, nor does it prevent Defendant(s) from the use of the real property within the

easement so long as such use does not interfere with the purposes for which the easement is being acquired. This easement does not convey the right to use the easement in a manner that would deny any right the Defendant may possess of reasonable access to property outside of the easement.

**Duration of easement.** The easement shall begin at the time actual construction of said project is commenced at the location of the easement, and shall continue for a period of the three years or until the earlier completion of the project. The easement shall run with the real property and shall be binding on Defendant(s), their successors, heirs and assigns.

**Restoration of property.** UDOT will restore the real property as nearly as reasonably possible to its condition prior to any material disturbance from construction activities, consistent with project improvements.

The boundaries of said part of an entire tract of land are described as follows:

Beginning at a point in the easterly boundary line of said entire tract 827.00 feet West and 62.07 feet South from the North Quarter Corner of said Section 33 said point is also approximately 45.67 feet perpendicularly distant southerly from the control line of said project opposite engineer station 717+11.28; and running thence South 21.00 feet along said easterly boundary line; thence N.89°58'50"W. 82.00 feet along a line parallel with said control line to the westerly boundary line of said entire tract; thence North 21.00 feet along said westerly boundary line to a line parallel with and 45.67 feet perpendicularly distant southerly from said control line; thence S.89°58'50"E. 82.00 feet along said parallel line to the point of beginning. The above described part of an entire tract of land contains 1,722 square feet or 0.040 acre in area, more or less.

(Note: Rotate all bearings in the above description 00°07'58" clockwise to obtain highway bearings.)

## **PARCEL 2:**

Commencing 2 rods South and 759 feet West from the North Quarter Corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, thence West 68 feet; South 257 feet; thence East 68 feet; thence North 257 to the BEGINNING.

Said property is also known by the street address of:

2851 West 3500 South, West Valley City, Utah 84119 (PARCEL 2)

Less and excepting the following property taken by the Utah Department of Transportation for 3500 South Street right of way:

A parcel of land in fee, being part of an entire tract of property situate in the NE1/4NW1/4 of Section 33, T.1S., R.1W., S.L.B.&M. The boundaries of said parcel of land are described as follows:

Beginning at the northeast corner of said entire tract in the southerly right of way line of the existing highway State Route 171 which corner is 33.00 feet (2 rods by record) South and 759.00 feet West from the North Quarter Corner of said Section 33 said point is also approximately 16.58 feet perpendicularly distant southerly from the control line of said project opposite engineer station 717+79.27; and running thence South 29.10 feet along the easterly boundary line of said entire tract to a line parallel with and 45.67 feet perpendicularly distant southerly from said control line; thence N.89°58'50"W. 68.00 feet along said parallel line to the westerly boundary line of said entire tract; thence North 29.07 feet along said westerly boundary line to the northwest corner of said entire tract; thence East 68.00 feet along said southerly right of way line to the point of beginning. The above described parcel of land contains 1,978 square feet or 0.045 acre in area, more or less.

(Note: Rotate all bearings in the above description 0°07'58" clockwise to obtain highway bearings.)

And, subject to the following perpetual and temporary easements:

#### Perpetual Easement

A perpetual easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 33, T.1S., R.1W., S.L.B.&M., in Salt Lake County, Utah, for the purpose of constructing and maintaining thereon public utilities and appurtenant parts thereof including, but not limited to ATMS fiber optic conduit, electrical service and transmission lines, culinary and irrigation water facilities; and highway appurtenances including, but not limited to slopes, street and signal lighting facilities, directional and traffic information signs.

The boundaries of said part of an entire tract of land are described as follows:

Beginning at a point in the easterly boundary line of said entire tract 33.00 feet (2 rods by record) South and 759.00 feet West and 29.10 feet South from the North Quarter Corner of said Section 33 said point is also approximately 45.67 feet perpendicularly distant southerly from the control line of said project opposite engineer station 717+79.28; and running thence South 3.50 feet along said easterly boundary line; thence N.89°58'50"W. 46.50 feet along a line parallel with said control line; thence N.00°01'10"E. 3.50 feet to a line parallel with and 45.67 feet perpendicularly distant southerly from said control line; thence S.89°58'50"E. 46.50 feet along said parallel line to the point of beginning. The above described part of an entire tract of land contains 163 square feet or 0.004 acre in area, more or less.

(Note: Rotate all bearings in the above description 0°07'58" clockwise to obtain highway bearings.)

## Temporary Easement

A temporary easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 33, T.1S., R.1W., S.L.B.&M., in Salt Lake County, Utah, to facilitate the construction of roadway improvements, side treatments and appurtenant parts thereof and blending slopes.

**Non-exclusive use.** The easement acquired herein does not convey any right except as stated herein, nor does it prevent Defendant(s) from the use of the real property within the easement so long as such use does not interfere with the purposes for which the easement is being acquired. This easement does not convey the right to use the easement in a manner that would deny any right the Defendant may possess of reasonable access to property outside of the easement.

**Duration of easement.** The easement shall begin at the time actual construction of said project is commenced at the location of the easement, and shall continue for a period of the three years or until the earlier completion of the project. The easement shall run with the real property and shall be binding on Defendant(s), their successors, heirs and assigns.

**Restoration of property.** UDOT will restore the real property as nearly as reasonably possible to its condition prior to any material disturbance from construction activities, consistent with project improvements.

The boundaries of said part of an entire tract of land are described as follows:

Beginning at a point in the easterly boundary line of said entire tract 33.00 feet (2 rods by record) South and 759.00 feet West and 32.60 feet South from the North Quarter Corner of said Section 33 said point is also approximately 49.17 feet perpendicularly distant southerly from the control line of said project opposite engineer station 717+79.28; and running thence South 0.66 feet along said easterly boundary line; thence S.89°15'49"W. 43.21 feet; thence S.00°21'07"E. 16.27 feet; thence N.89°58'50"W. 24.90 feet along a line parallel with said control line to the westerly boundary line of said entire tract; thence North 21.00 feet along said westerly boundary line to a line parallel with and 45.67 feet perpendicularly distant southerly from said control line; thence S.89°58'50"E. 21.50 feet along said parallel line; thence S.00°01'10"W. 3.50 feet; thence S.89°58'50"E. 46.50 feet along a line parallel with said control line to the point of beginning.

The above described part of an entire tract of land contains 551 square feet or 0.013 acre in area, more or less.

(Note: Rotate all bearings in the above description 0°07'58" clockwise to obtain highway bearings.)